

Quid Novi

Vol. X, No. 9

McGILL UNIVERSITY FACULTY OF LAW
UNIVERSITE McGILL FACULTE DE DROIT

November 1, 1989
le 1 novembre 1989

Sinners Repent at Law Conference

by Michael Wilhelmson, LLB II

Of all the conversions since Saint Paul took a tumble on the road to Damascus, the conversion of the corporate world to the cause of environmentalism has to be one of the most surprising. Hold back that snicker for a moment.

Ten years ago, a seminar on the topic of corporate responsibility and the environment would certainly have been a one-sided affair. And if a corporate representative dared show face, he or she may well have been drawn and quartered,

or perhaps have faced something really unpleasant.

But inspired by Darwinian reasoning and Loblaw's "Green" products, the corporate world has finally seen the light - or so participants at this year's 18th annual conference of the Canadian Council on International Law were told. The seminar on corporate responsibility was held on October 20 at the Château Laurier in Ottawa.

One would have expected the discussion to lead to a number of fiery exchanges.

But instead, the participants looked on, polite and attentive, scribbling away occasionally in their notebooks. There was silence in the room as one panelist described how environmental experts now sit at meetings of the Board of Directors. The corporate conversion has left its critics momentarily stunned.

The discussion swerved clear of charges of greed and Mephistopheleanism to focus instead on the barriers in the way of that modern utopia called "sustainable development". The dream is to lift up the

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UNREPORTED

by Ross Milliken, LLB III

This case raises for decision the question just how far certain principles of unjust enrichment may be extended by the courts.

The plaintiff is a professor at a post-secondary institution. He teaches humanities. At the relevant time the defendant's wife was a student in a night school class he was teaching. The plaintiff has given evidence that at no time did he have actual knowledge that the defendant's wife was anyone's wife. He thought she was single. The

defendant's wife (whom I shall refer to as "the wife") showed a special interest in humanities, which manifested itself at first in lengthy discussions with the plaintiff after the classes ended, then later in a sexual relationship.

Plaintiff denies he misused his position of trust, alleging that he found the wife so devoid of sophistication and acquaintance with the finer things in life that he was inexplicably drawn to her. His evidence further discloses that for approximately six months he tutored the wife in literature, opera, architecture,

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ANNOUNCEMENTS

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**Tasses QPIRG Mugs
Now available at SADIE'S!**

LSR - National Newsletter

We are looking for people who would be interested in assisting in the production of the national LSR newsletter. We have a contract to put out four issues over the next 12 months. Initial responsibilities would involve production and subsequently expand to cover editing and solicitation of articles from LSR chapters across the country. If interested, leave a note in the LSR box in the LSA office or get a hold of Glenn McDonald at 271-0758.

Invitation générale

Venez rencontrer le nouveau groupe des *Civilistes* à un Vin et Fromage, mardi, le 7 novembre à 16h00 dans le Common Room. If you would like to know more about the *Civilians* and its planned workshops, come to our Wine and Cheese in the Common Room, Tuesday November 7th at 4:00 p.m.

Yearbook Photos

The Yearbook Committee kindly invites all clubs/committees to participate in this faculty's third annual Yearbook. We request that each club/committee wishing to be included in the annual submit the following no later than November 15:

1. A black and white photograph of your club/committee and
2. A list of the names of its members (please indicate which members appear

in the photograph).

If you are unable to provide the Committee with your own photo or would rather have a Committee photographer take one for you, we would be happy to accommodate you. Please drop us a note to this effect by **November 5**, so that a convenient time may be arranged within the deadline.

We encourage your group to be as creative as you wish in representing your group members. If you have any further questions or inquiries they can be directed to Bram Freedman and dropped in the Yearbook box in the LSA office.

Environmental Law Association of McGill

Si l'environnement vous tient à cœur, impliquez-vous dans le lancement d'un nouveau groupe. Venez avec vos idées et votre énergie, votez pour la constitution et l'exécutif de l'association de droit environnemental McGill (ADEM) Mercredi le 1er novembre à 12h30, salle 203. Bienvenue à tous.

Interested in environmental questions? Come on out to vote on the constitution and for the executive of the Environmental Law Association McGill (ELAM). Bring your ideas and energy. Everyone welcome. Wednesday November 1st, 12:30 p.m. in room 203.

YEARBOOK NEWSFLASH

The deadline for paying our deposit to the printer is fast approaching. We must sell

at least 200 yearbooks to meet our commitment so order NOW. It will only cost you \$10 to keep the tradition alive. Very few extra copies are produced and will be sold at \$15 upon delivery in Sept. 1990. We need your support so don't delay. See your class president and order a Yearbook before November 3, 1989.

LAW GAMES/JEUX 'RIDIQUES

LAST DAY TO PAY: NOVEMBER 1st
Ha weille, tout le monde!
PIT: 11:00 - 14:00
call Jordan 286-1086 for last-minute info

Moulson, Golden

The law firm of Moulson, Golden (offices in Yellowknife, NWT and Baltimore, MD) is proud to sponsor the Alternative Lecture Series. Our first lecture will be held Saturday October 28 at 7:00 a.m. in the Smokers' Lounge:

Martin Pilzmaker:
"Tapping the Hong Kong Market - Creative Strategies for Expanding

Letters to the Editor

Obligations II - Practice Exam

by Willie Mercer,
Rob Frank and
Nathan Schipper, BCL II

Skipper was a law student at McGilligan (a large university on the island of Montreal). The law school had a weekly, student-run newspaper called "The Writ". "The WRIT" used to be a fairly enjoyable paper to read while passing time between classes (or during classes). The periodical was filled with important notices and humourous anecdotes pertaining to McGilligan Law School. While some of the articles may have been off the wall, they were not as offensive as some of the other faculty weeklies (eg. engineering), and were always written in good taste.

However a new editorial staff took over

the "Writ" and instituted a much stricter policy of editing. Presently, all articles in the "Writ" are of a very serious nature, and consequently, it does not enjoy the mass appeal it once did. Basically, the "Writ" is not widely read and is left in bundles on the tables around the faculty where it is dropped off.

On the cover of the "Writ" is a small warning which reads: "Careful — heavy reading!" Skipper was lifting a couple of Writs off a table when he got a hernia. Skipper thought that the warning "Heavy reading" was just a joke.

Skipper has come to you, the Professor, for advice. Can Skipper sue Mr Howell and the rest of the editorial staff? Did the Skipper act reasonably in assuming the warning was just a joke given the writ's aversion to humor? Will Ginger and Mary-Ann ever bake another Coconut

Cream Pie?

This is funny and the *Quid Novi* is always eager to print funny material. We hope to get lots more soon. As a special bonus, this issue includes schtroumpfs and funny fruit faces to clip out and save. -the eds.

Dear/Cher *Quid* :

Nous/we sommes/are tannées/tired de/ of lire/reading des/some articles/articles en/in moitié-moitié/half and half français/English.

Puisque/Since nous/we sommes/are binlingues/bilingual qu'ils soient/ whether they are en/in français/English n'a pas/doesn't make d'importance/any difference.

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Entre nous

Happy Birthday to Doug Desmond:

"Dazzling, dapper, debonair, dazed, dear, distractible, different, drinker, determined, dependable, demonstrative, dogmatic..."

You'll *never* be old!
All your pals in law school.

Esprit-fantôme-de-prince-charmant recherche âme-soeur-aux-longues-dents-laide-comme-un-pou pour une «sortie aveugle» (!! avez-vous une autre traduction de "blind date"???) mardi le 31 octobre. S'abstenir si vous n'aimer ni les bonbons ni l'Unicef.

To my little fuzz wusster,
Meet you in the stacks at midnight,
Grotius, your colleague

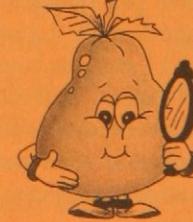
Oh my darling Grotti-poo,

The library is closed at midnight. So, it's your stacks or mine?

Fuzzi!

Cher Stéphane,

Félicitations à notre malfrat favori! Nous connaissons tous ton attachement profond à ton héritage magyar, mais ignorions que les zadouskis t'avaient à ce point marqué (bien que leur effet puisse se deviner assez facilement). Evidemment, à force de déménager ses pénates au Groenland à chaque été pour assister aux dernières gymkhanas, on ne peut en venir qu'à améliorer son aurtografe! Bravo Stéphane, on est tous très fiers de toi (et n'oublie pas de nous ramener des petites Tour Eiffel en plastique de Paris!).



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Colouring Canada's Legal System

by Hanson R. Hosein, LLB I

During my first few weeks of law school I was warned several times that "justice" is considered to be a very elusive concept by law students and professors alike. This advice did not surprise me at the time. It became more noticeable soon after when I realized that my experiences as a member of a visible minority in Canada had some bearing on my analysis of a case.

This realization occurred in Foundations after having read over the two assigned judgements, Re Drummond Wren and Re Noble and Wolfe. Both incidents had similar facts: during 1940's Ontario, respective contracts were established that prohibited certain property owned by private individuals from being sold to or occupied by Jews, visible minorities, or anyone else of "objectionable nationality". In the former case, the court voided the contract in the name of public policy, citing the Ontario Racial Discrimination Act (1944) and the United Nations Declaration of Human Rights, among others. The latter case held that freedom of contract was the operative principle, and that it was the federal government's responsibility to enforce its treaties and public policy.

It was obvious that the point of the exercise was to make the first year law student understand that law is not an exact science with a predictable outcome. I wondered however if a lawyer or judge, who was a member of a visible minority, could render a judgement similar to the one made in Noble and Wolfe. Given these circumstances involving evident racial discrimination, it is probable that this individual would find more "justice" in Drummond Wren. Nevertheless, in

balancing one's personal concept of justice with a possible interpretation of the current laws, it might prove difficult to make such a choice.

Clearly anyone, regardless of their ethnic background, could be put into a situation where their beliefs conflict with the application of law. I think though, that it is more than personal beliefs that are upset by this possible conflict but it is also an entire way of life from the member of the visible minority's perspective that is also affected.

It is rare that someone from a visible minority has not experienced discrimination at least once in his or her life. Such an experience affects one's personality. As Esmeralda Thornhill indicated during her lecture at the Annie MacDonald Langstaff Workshop (October 11, 1989), she cannot help but feel a bit of paranoia when in public. Ms Thornhill explained that thus feeling develops through the existence of small discriminatory actions which are directed towards a member of a visible minority. Her personal example of being frequently shadowed by security when entering a store, simply because of her colour, is an example of this occurrence. Ms Thornhill went on to say that even though these so-called "micro-aggressions" are not consciously noticed by the victim at the time, they do accumulate, and can actually affect an individual's personality. In my case, my experiences as a minority do not only affect my outlook in terms of social interaction, but they also colour my perspective of how the law should be interpreted.

I believe that a "minority" perspective in the legal system is vital. It allows a more comprehensive view of cases which

Colouring Canada...
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reflects the evolution of Canada into a diverse nation of communities. I realize that I am making observations based on only a few weeks of law school. However, I consider it important to voice these ideas in order to canvass both supporting and opposing sentiments.

The purpose of this article is to solicit ideas from those who would be interested in forming an organization dealing with minorities in the law, similar to "Women in the Law". It must be stressed that such a group should not be open only to visible minorities but should encourage participation representative of the entire student body. This would ensure that the diversity of experience which makes the McGill Faculty of Law so distinctive is properly recognized.

It is not conclusive that such an idea is viable, but I would like to discuss it with others before it is dismissed. The following is a suggested agenda for the organization:

1. Creating a forum to discuss the place of minorities (including aboriginal peoples) within the law.
2. Promoting confidence in the judiciary and law enforcement agencies by eliminating "systemic prejudice" (e.g. the Donald Marshall incident, conflicts between police and "ethnic" communities).
3. Promoting awareness of the existence of racism in the legal system.
4. Encouraging members of minority groups to participate in the Canadian legal system.
5. Exploring the Faculty's cultural diversity through social events.

If anybody would be interested in discussing the possibilities of this idea, please me, Hanson Hosein, or call me at 286-1404.



The Montreal New Music Festival

by Julie Godin, BCL III

If the expression "new music" brings to mind atonal compositions performed on household appliances, or endless repetitive scales "à la Philip Glass", it's time you discovered the Montreal New Music Festival. In this context, the label "new music" encompasses the varied world of small independent record labels, college radio stations and hard working but unglamorous bands. The Montreal New Music Festival has traditionally been an opportunity for veterans of the raunchy bar circuit to emerge temporarily from squalor and show off their talents to fans and peers. The result is unusual, eclectic and sometimes disastrous, but an evening spent at the Festival always makes for good conversation.

Under the guidance of Duncan McTavish, head of Faze Productions, the Montreal New Music Festival has become quite an elaborate and impressive musical smorgasbord. This year's lineup includes many bands from outside Quebec, with some headlining acts from the USA and England. Musical offerings range from folk and country to heavy metal, and bands are grouped for each show depending on their style and on the type of audience they attract. For those who fear the great musical Unknown, here is a rundown of the city's best loved local bands.

The **Hodads** (Nov 2), who play a country-folk blend of catchy songs, is one of our finest live bands (and one of the first to break the rock n' roll gender barrier). They open for American folkies **Timbuk-3**. The **Asexuals** and **Ripcordz** (Nov 3), veterans of the Montreal scene, thrash out loud, Pistols-inspired rock. They seem like the type of people you wouldn't want to get in a brawl with on the set of "Geraldo". However, Paul Gott, lead singer of **Ripcordz** and editor of *Rear Garde* magazine, denies any link with Skinheads of the white supremacist

variety. For fans of Ska Music, **Me, Mom and Morgentaler** (Nov 9), a large, energetic band complete with horn section, puts on a lively show. Also, don't miss **Swinging Relatives** (Nov 11) and young Paul Weller wanna-be's **The Griffins** (Nov 9). **Ray Condo** and his Hard Rock Goners (Nov 5), widely believed to be Montreal's finest band, play an original concoction of country, rock-a-billy and blues. The Goners look like they could be performing at wedding receptions, but Ray has manic energy to spare, and his stage presence is irresistible. If K.D. Lang had Elvis' child, it would grow up to be Ray Condo. **39 Steps** (Nov 10) is also a big name in local music. Their claim to fame is an appearance in **Hannah and Her Sisters**, as the crazed punk band which ruins Woody Allen's date with Diane Wiest.

Jerry Jerry (Nov 12), my personal favorite, is St-Henri's closest thing to a rock star, the missing link between Jerry Lee Lewis and Jimmy Swaggard. Backed by his old band, the Sons of Rhythm Orchestra, he recorded the classic "Battle Hymn of the Apartment" album, and penned such inspiring songs as "Pushin' for Jesus" and "Wazoo". With his charismatic blend of irony, hard living and rock n' roll gospel, Jerry can bring down the house on a good night. His new band is virtually unknown, but he's a good bet for the festival's closing show. **Condition** (Nov 4) boasts legions of fans, but the singer's Pee Wee Herman screams may drive you insane. Their "lounge act from hell" schtick is not for everyone, but if you love organ music, don't miss it. **The Scraps** (Nov 12), made up largely of what used to be **The Darned**, is probably Montreal's least pretentious band. After recently taking top spot in a city-wide competition, they exclaimed: "We don't give a ____!" These guys have experienced every facet of the struggle to survive as a local band. Don't miss this fine roots rock outfit.

The Montreal New Music Festival runs
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Sinners...**Cont'd from p. 1**

developing world without pillaging the inheritance of future generations. The same principle of "living off the yield and not the principal", in the words of one of the panelists, applies equally to the rich North.

The importance of international regulation of corporate activity has grown in prominence in recent years after a series environmental catastrophes. These include the infamous Bhopal gas leak that killed 3,000 and injured over 200,000 in India, the explosion at the Chernobyl nuclear reactor in the Ukraine, the discovery of a hole in the ozone layer, as well as acid rain and global warming.

The participants were told that international law's major weakness is that corporations are not proper subjects and that there is no central decision making and enforcement authority. Professor Venkata Raman of Queen's

University called the Bhopal case an example of the "bankruptcy" of international law.

A natural extension of the desire for a stronger legal regime is a communitarian-type emphasis on corporate duties. The suggestion is that corporations should be obligated to act morally, even if this means imposing on themselves higher standards than the law requires. This is especially relevant when a corporation is operating in a developing country with little environmental legislation (though this is rare today) or no effective enforcement of its laws.

Ron Woznow, Vice-president, Environment of Fletcher Challenge Canada, says that in 1985 he had never even heard the word ecology. "But there's been a significant change and this is reflected in the boardrooms of the nation," he noted. "We're driven today by an awareness that we have to be in tune with what society expects of us."

But Charles Ferguson, Director, Environmental Affairs, Inco Ltd, was more inclined to state the corporate creed: "Resources are developed if the value you can get out is worth more than what you put in." This was in response to the charge that commercial feasibility should not be the sole prerequisite to development. But Ferguson added that another obstacle in the way of sustainable development comes from the developing countries themselves. It is the view that the rich North should not, after cutting down its own forests and polluting its own lakes, be able to prevent the developing South from enjoying the fruits of a belated industrialization.

Professor Raman was the most critical panelist of current attitudes. He attacked any idea that corporations ever act in a missionary spirit. "If a developing country rigidly enforced its environmental laws, the corporations would go elsewhere," he stressed. He

Cont'd on p. 7

Sex Hints

**Le Quid et le Conseil de l'A.E.D./
LSA, au nom des étudiants, tiennent
à remercier Brian Shiller et Randy
Marusyk (pas nécessairement dans
cet ordre) pour tout le temps qu'ils
ont investi dans la mise en réseau des
ordinateurs, là-haut au 4e.**

**Nous aurons tous de bonnes pensées
pour vous dans les prochains mois
lorsque le réseau décidera de prendre
congé...**

Sex Hints of the Rich and Famous

New Sign-on Instructions

The Computer Committee
October 23, 1989

- (1) Turn on both computer and screen
- (2) Let the machine "boot-up" - **NO SOFTWARE IS NECESSARY**
- (3) When the message "enter your login:" appears, type in your McGill student number then press the ENTER

key

(4) When the message "password" appears, type in the word "lawyer" then press the ENTER key

(5) If you have mis-typed either your student number or your password, the computer will default to F>\. If this occurs, type LOGIN then press the ENTER key. This will allow you to repeat steps (3) and (4) above.

(6) Once you have completed the sign-on procedure, the computer will emit three phaser blasts and load the network software.

(7) Choose the software application that you desire from the menu (eg. WORDPERFECT 4.2, SOQUIJ, etc.) by using the arrow key to highlight your choice...then press the ENTER key.

(8) All of your personal files are to be stored on the 3.5 inches B drive (you will need to purchase one of those storage disks)...When using WORDPERFECT,

store all your files using the F10 command. DOCUMENT TO BE SAVED will appear, type: B:\"your file", then press the ENTER key.

(9) It is strongly recommended that you change your password to a new six letter word so that only you can access your account. Write down your new password in at least two different places. Keep your password confidential - you will be responsible for all laser printer fees (\$0.10 per page) that are charged to your account.

(10) To sign, simply turn off the computer and screen.

(Tricked you!) P.S. Kiss with your eyes closed.



Sinners...

Cont'd from p. 6

added however that the fault is not fundamentally with the corporations, but with the markets. "There is an obligation now to share collective responsibility for the world's problems," he said. He noted that the push must come now for equity in world labour, as well as changes in investment policies. This involves an emphasis on equitable sharing of the world's resources rather than on the maximizing of individual profits.

Raman suggested factoring in the "common" or global factors into business decision making. Raman also suggested using international trade law as a tool to manage environmental concerns. There must also be a simple avoidance of waste.

One member of the audience suggested constructing a new type of corporate law - perhaps to create a corporate-altruist super-being to cruise the globe developing unprofitable, but socially beneficial, projects.

Though perhaps a thought for CBCA 2001, Chairperson Douglas Hamilton added that this still wouldn't deal with the damage done by national corporations within the developing countries themselves.

[Next week: Juli Abouchar, LLB III, continues reportage on the CCIL Conference in Greening of the Law, with comments on keynote speaker Professor Richard Falk of the Center for International Studies, Princeton University, and an account of the panel discussion on "Negotiating International Conventions for the Protection of the Atmosphere".]



Stéphane Ethier: en direct et en français

par Jean-Philippe Gervais, BCL II

Stéphane Ethier, étudiant bien connu de deuxième année et symbole vivant de la joie de vivre des Montréalais, a gagné le 21 octobre dernier le premier prix, catégorie junior, du championnat mondial d'orthographe de langue française. Bien entendu, nous offrons nos plus sincères félicitations à Me Ethier, mais dans un effort de traquer l'information là où elle n'existe pas, le *Quid Novi* propose à ses lecteurs

quelques extraits de l'oeuvre littéraire de notre illustre compagnon de classe. Vous rirez, vous pleurerez, ça vous rappellera votre enfance. En prime, il s'agit d'une occasion en or pour parfaire son vocabulaire et apprendre des mots nouveaux, particuliers à l'univers «Ethier». Donc, sans plus tarder, prenez votre souffle et laissez-vous aller, en vous disant que dans 20 ans, vous pourrez affirmer sans mentir que Stéphane Ethier, vous l'avez connu avant qu'il devienne immense (au niveau de la réputation, bien sûr!).

• • • • • Du coq à l'âne • • • • •

par Stéphane Ethier, LLB II

A propos des vacances

Je ne sais pas si vous avez eu des vacances aussi courtes que les miennes (26 août-4 septembre), mais je commençais pas mal à m'habituer à me lever à deux heures de l'après-midi et regarder Batman au 10 avec mon Kik pis mes Cherry Blossom (ouache!), tout en me nourrissant l'esprit avec mon TV Hebdo (tout sur la relation amoureuse entre Michèle Richard et son broyeur à déchets...ouache!). Mais ça fait rien, c'était bon!

A propos des étudiants de 1ère année

Un petit message à nos p'tit(e)s copains(ines), les «feûrst-yêres» [NDLR: oui, oui, c'est «sic!】 comme nous les surnommons si gentiment (ah oui ?!): certains seront peut-être gênés d'apporter leur Baudouin nouveau sur les pelouses de la fac, surtout vu le temps qu'il fait (c'est la nouvelle mode cet hiver, pour les étudiants en droit : plus d'oxyde de zinc fluo pour éviter de brûler sur les pentes; un bon cerne d'étude de Constitutionnel fait très bien l'affaire.). Eh bien, je voulais seulement vous dire que ça n'est pas grave de salir son Baudouin parce qu'on s'est assis dessus

pour éviter de ruiner son fond de culotte dans les traces de moto qui ornent nos pelouses. En effet, quand viendra le temps de faire une piasse (faites-vous-en pas, ce ne sera pas plus que ça) à la vente de livres usagés l'an prochain, vous pourrez au moins dire que votre Baudouin a servi à quelque chose!

A propos de la sortie prochaine de la version cinématographique de son autobiographie

Un dernier mot : le monde entier doit voir «sex, lies and videotape». Titre fort révélateur pour un des meilleurs films de ces dernières années : performances magistrales de James Spader et Andie MacDowell (et on l'a fait taire dans Greystoke.... ah les cons(!)), cinématographie «low budget» et diablement efficace de Steven Soderbergh et, naturellement, un sujet...ehu, brûlant, disons. [NDLR : non mais quelle verve poétique!]

Letters...

Cont'd frpm p. 3

Mais/But les deux/both en même temps/at the same temps/time ça tappe/it drives sur les/us nerfs/crazy.

Sharon Kuzminski, admissions office

[NDLR/Editor's note: Avez-vous/Do you have une autre/another suggestion/ibidem ?/?]

Cont'd from p. 1

philosophy, baseball and jazz. The physical aspect of the relationship was alleged to be secondary to the pleasure derived watching the wife blossom as an entity sensitive to the rewards of sophisticated living.

Now, the defendant is in the employ of the postal service, and stated in his evidence that he leads a normal, quiet life. Immediately he noticed the changes in his wife's behaviour and attributed them to the night-school course, her taking of which he had not been in favour of. He states it was "an idea she got off watching Donahue". He eventually consented because he had been paying off the mortgage on their house working overtime, and he felt a little guilty leaving her alone with nothing to do but watch TV. His suspicions became aroused in the normal ways, and one evening there occurred a sequence of events which included a severe beating administered to the plaintiff by the defendant, which is not the subject of this litigation.

The issue at stake in this action is, as I may have intimated, the unjust enrichment of the defendant by the plaintiff. Plaintiff is seeking restitution of the wife. The defendant counterclaims in trespass and seeks consequential damages.

Despite the unusual nature of the claims we have agreed to proceed on the basis that this is an area of the law undergoing great change, and a definitive statement on the principles involved will be of great benefit to the community.

It is contended by defendant's counsel that the proceedings are a sham, a mockery of the justice system, that to attempt to apply restitutionary principles to the facts of the case is against public policy, and that the effect of their application will be to deem the wife to have the status of a chattel, which, he insists, cannot be correct, not in this day and age. It is urged that the plaintiff has, at best, a claim in tort.

Counsel for the plaintiff countered that argument, saying: "If that's the law, well, it's just stupid. It's totally incoherent and makes no sense at all." He added that, in his opinion, defendant should be barred from raising the "chattel" issue as a means of derailing the litigation, as there is substantial evidence to show the wife does in fact have the status of a chattel in defendant's subjective valuation.

I conclude that whether the wife is or is not a chattel is an issue I will not have to decide, that the outcome of this case will turn strictly on principle.

Plaintiff's counsel bases his argument on the doctrine of accession, and quotes a passage from Blackstone: "If one takes away and cloaths (sic) another's wife or son, and afterwards they return home, the garments shall cease to be his property who provided them, being annexed to the person of the child or woman." So that, he reasons, if the plaintiff had merely bought clothes for the wife, he could make no claim. But Blackstone continues: "If the thing itself, by such operation, was changed into a different species, as by making wine, oil, or bread, out of another's grapes, olives, or wheat, it belonged to the new operator; who was only to make a satisfaction to the former proprietor for the materials which had so converted."

A witness, a former close friend of the wife, gave evidence which tended to support the proposition that the wife was no longer of the same species. Until her involvement with the plaintiff, the wife and the witness had been "drinking mates", and they frequented a local tavern, with which I am familiar, where it is said their reputation for good times was notorious. As recently as a year ago the wife won a wet t-shirt contest there. I was there. She deserved to win. At present, she no longer frequents the establishment, drinks only an occasional white wine spritzer, and has enrolled in a night school course called "The Right to

Self-Determination: Feminism in Contemporary Society".

I think it is established that the wife is no longer of the same species.

Still, the doctrine of accession is ancient. It has drawn much criticism among scholars. Counsel sought to defend its applicability by postulating that it was merely an incidence of what is now referred to under the umbrella term, unjust enrichment. He admits that while all people are to a greater or lesser extent enriched when they interact with others in society, this is a special instance where the value of the enrichment exceeds the value of the wife in her initial state. Because of the difficulty of expressing the enrichment in monetary terms, restitution of the wife is the only way to effect justice.

Counsel for the defendant objected to the use of the term "value", but I conclude that what is meant is "constructive value". I find it desirable to keep semantic arguments to a minimum, so that the issues can be resolved on principle.

It was suggested by defendant's counsel that if it is possible to attribute a constructive value to the wife, then it must be equally possible to attribute to the defendant a constructive ownership in her. I quite agree. As concerns the alledged enrichment he quoted the well-known remark of Pollock C.B.: "One cleans another's shoes: what can the other do but put them on?"

I think that has a good ring to it. It is good law.

Counsel for the defendant cited authority in support of the proposition that, in the event that the doctrine of accession was applicable to these facts, still the plaintiff, as a wrongdoer, could not recover. Plaintiff is a wrongdoer because

Unreported

Cont'd from p. 8

Cont'd on p. 12

LSA BUDGET 1989-90

The LSA, as requested last year, is printing its budget in the *Quid* in order to allow all students to see where their money is going. Ce budget fut accepté par le Conseil législatif de l'A.E.D., le 15 octobre 1989, selon les normes de la Constitution de l'association.

Revenue

Student fee	\$7440.00
Cafeteria Revenue (est.)	
8000.00	
Social activities	2000.00
Games	2500.00 ¹
Reimbursement - Sports Committee	1500.00 ²
Book Sale	<u>100.00</u>
Total Gross Revenue	\$21 540.00

Expenses

Administration

Telephone	
1500.00	
Photocopies	
750.00	
Supplies	650.00
Computer	450.00 ³
Total Admin. Expenses	\$ 3350.00

Other expenses

Orientation	
500.00 ⁴	
Facilities improvements	
1300.00 ⁵	
Trophies & Awards	
500.00	
Cable service	220.00 ⁶
CALS	
300.00	
CADED	
300.00	
Skit-Nite donation	
200.00	
Yearbook Donation	
200.00	
Presidents' Council	
100.00	
Contingency	
2000.00	
Total Other Expenses	\$ 5620.00

Total Expenses

<u>\$8970.00</u>		<u>\$36.00</u>
<i>Net Revenue</i>		Notes
\$12570.00		1. This amount is an estimate based on last year's proceeds as well as the month of September of this year.
(Available for allocation)		2. This amount represents money owed to the LSA by the Sports Committee.
<u>89</u>	<u>1989-90</u>	1988-
		(revised)
LSA Committees		
Careers Committee		
60.00	60.00	
Computer Committee		375.00
n/a		
Graduation Committee		3200.00
4000.00		
Sports Committee*		3056.00
2810.00		
Yearbook Committee*		300.00
n/a		
Clubs		
Delta Theta Phi		285.00
60.00		
Environmental Law Assoc. ¹⁰		n/
a	60.00	
Forum National		740.00
955.00		
Les Civilistes ¹¹		310.00
335.00		
Int'l Law Society		285.00
335.00		
L.S.R.		580.00
854.00		
St. Thomas More	n/a	60.00
Women and the Law		455.00
455.00		
Conferences¹²		
L.S.A. Conference		n/
a	800.00	
Native Rights Conference		
n/a	800.00	
Others		
Class fund		800.00
800.00		
Legal Aid		750.00
n/a		
Additional Speakers Fund		375.00
150.00		
Total	\$12534.00	\$11571.00
Surplus (deficit)		(\$148.00)

1. This amount is an estimate based on last year's proceeds as well as the month of September of this year.

2. This amount represents money owed to the LSA by the Sports Committee.

3. This amount includes the cost of the service contract and supplies for the computer.

4. The amount represents the LSA grant to the Orientation Committee. This amount is subject to change following the reception of the Orientation Committee's financial report. This report is expected by November 1989.

5. This is an estimate of the costs involved in improving student facilities, notably the cafeteria, the student lounge and the study room.

6. This is an approximation of basic cable service for one year.

7. The allocation of funds to the various groups was done according to the funding guidelines adopted in 1987-88 by LSA Council. Each group requesting funding was required to submit a formal request detailing its anticipated revenues and expenses as well as disclosing any remaining funds from preceding years. All allocations were made in an attempt to justly and equitably distribute available funds.

8. The initial allocation of \$1685 to the Sports Committee was increased by an LSA Council resolution to \$3056. This was due to the increase of participants from 100 to 140. The 1989-90 figure of \$2810 is based on a \$10 subsidy per participant to the Law Games (estimated at $150 \times \$10 = \1500), a \$10 subsidy per person attending the Law Games banquet (estimated at $50 \times \$10 = \500), the base fee of \$500 and \$310 for other sporting events.

9. The Yearbook Committee is now self-sufficient and no funding has been requested.

10. The allocation of \$60 is conditional upon the LSA giving the Environmental Law Association club status.

11. Groupe Francophile changed their name to Les Civilistes.

12. This is contingent upon the conferences taking place. An advance of \$200 was given to the Native Rights Conference.

Senate Happenings

by Robert M. Fabes, LLB II

The Senate is the focus of most decision-making at McGill, subject to the Board of Governors' approval. Issues that the Senate may deal with range from faculty curricula to the physical development of the university. There are over 80 senators comprised of administrative staff, Deans, faculty members and students. All 19 student senators have full voting powers.

A policy negotiated by the administration and the organization for non-academic staff (MUNASA) regarding casual workers in non-academic positions has been submitted to Senate. This policy would affect students working on a casual basis at various facilities, e.g., Sadie's or Currie gym. While drafted with the intention of enabling casual workers to receive benefits available to unionized regular workers, the policy raises a number of problems:

1. The number of hours that a casual worker can work before that worker would have to be hired as a permanent worker has been narrowly defined. Because of this, some senators feel that budgetary problems will ensue and job opportunities for students will decrease.
2. Students, defined for policy purposes as someone taking at least 18 credits, or a full or half time graduate student, would be exempt from the policy.

Faculty members and students expressing their concerns successfully passed a motion delaying implementation of the policy. On October 16, the Board of Governors decided to accept the casual policy as originally presented, overturning the Senate motion. However, the Board did recommend that consultations with concerned parties occur regarding implementation of the policy.

A number of faculty and student representatives expressed that they would want the definition of "student" broadened for policy purposes. Unfortunately this would leave open for continued exploitation certain students who need the protection of the policy. For example, a part-time student taking two courses per semester (12 credits for the year) employed as a full-time casual would not benefit from the policy. Even if the definition is not broadened, students employed as part-time casuals on a regular and extended basis would not have any protection. These problems need to be addressed during the consultation period.

Senate meetings are open to the public and are held every second Wednesday at 14h20 in Leacock 232. If you would like more information or have a concern that you think needs to be brought to Senate's attention, come and see me at the LSA office or leave me a note in the Law Senator's box.

Coin des Sports Corner

It has been a banner season for Intramural Teams. The hardhitting Law AA hockey team continued its stranglehold on the league, beating the team that edged them in last year's final. The game saw pairs of goals by S. Michelin, D. McGuire, and S. Levine, who described his marks as "Two blistering slapshots...from the blueline." Smoothy Johnson added an empty netter in the 7-5 romp.

Basketball's "Whatevers" increased their record to 2-0 with a hard-fought win. Despite the fact that only 5 of 16 players on the roster showed up, the law team was led by spirited performances by M. Steinberg and Michel, and power inside moves by Peter and D. Butts. Buzz was sidelined with a broken beak.

Flag Football, Soccer and Softball teams all anxiously await their playoff schedules.

Tournoi de Squash Il y aura un tournoi de squash contre la faculté de droit de l'Université de Montréal vers le 11 novembre (samedi). Le nombre maximum de participants est de 10 (hommes et femmes). Veuillez vous inscrire sur le Sports Board dans le Pit.

LAW GAMES/JEUX 'RIDIQUES':
 "The most fun you will ever have in law school" -P.M. Johnson
 "What a party, mon!" -P.E. Trudeau
 "I laughed, I cried, I saved 20 bucks!" - Bobo the Dog Boy

Keep rockin'! Mick Jordan



"The Nexus of Gender and Race"

by May Chin, LLB I and
Adelle Blackett, BCL I

Charged with the mammoth task of defining racism and its interconnectedness with gender, on October 11, Ms Esmeralda Thornhill ably outlined the history of racism in a Canadian legal context to an audience of approximately sixty people. Her lecture was a fitting beginning to this year's session of the Annie MacDonald Langstaff series; much has changed since the first woman studied law at McGill seventy-five years ago, and a commitment on the part of the faculty to make the study of law accessible to women of all races would be a positive, if not logical progression from Langstaff's "first".

Me Thornhill, agent d'éducation de la Commission des droits de la personne du Québec, présidente du Congrès des femmes noires du Canada, et membre fondateur du Congrès des avocats et juristes noirs du Québec (cette liste de

réussites est loin d'être exhaustive) - a nettement illustré que le rapport entre le racisme et le sexismne n'est pas évident en soi. Afin de mieux apprécier leur réalité juridique, il faut constater la manière dont le racisme et le sexismne se rattachent.

Racism, as it applies to the law, cannot adequately be addressed without a reasonable appreciation of its history. Realizing this, Ms Thornhill made an effort to bring to light several sparcely known facts about Canada's history of racism toward "non-whites". Among the examples offered were slavery in New France, discriminatory immigration policies at the turn of the twentieth century, and the virtual "indentured servanthood" of West-Indian women who were recruited to serve as domestics in major Canadian cities in the 1960s. Most insightful in relation to law was the acknowledgment that such critical components of Canadian law as convention and discretionary rights of judges, have the potential to work against "visible minorities". The recent inquiry into the faulty conviction of Native Canadian Donald Marshall is a

foremost example of Ms Thornhill's claim.

Me Thornhill a offert une définition pratique du racisme: le préjugé raciale + le pouvoir institutionnel = le racisme. Ceci fait ressortir la différence entre la pensée discriminatoire d'un individu en contraste avec l'action raciste de cette personne en sa capacité de policier, en particulier quand son action fut justifiée par les institutions officielles.

Ms Thornhill concluded her hour with a description of where she believes feminism must stand in relation to racism. She used the analogy of a bus, prepared for a journey, which is empty save for its driver. Potential passengers - women of many origins and classes - are outside. These women are walking, with resolve, to their destination. They are aware of the bus, but will not enter it unless they are assured that the bus is going their way. The bus conductor, to make the resources useful to women, must share access to the bus, and to decision-making. Indeed, feminist activism must struggle to meet the needs and aims of women of all ethnic origins; accessibility to the study of law to reach the destination of a racist-free and sexist-

Dear Zelda

Dear Zelda:

My boyfriend is a licorice addict. He eats one piece for like every case he reads. I fear he will either blimp out or turn red. What do I tell him?

Signed: Nancy Nibs

Dear Ms Nibs:

I once read that the very famous Justice Cardozo used to eat a box of jujubes a day when he was in Law School, so maybe it will pass in time for him to pass the bar. Just tell him to brush and floss after

meals and save some money for

pinball.

Keep on writing, sweeties
dans n'importe quelle langue.
A la prochaine, Zelda.

[editor's note: Zelda is unrelated to Dear Abby Initio]

Unreported**Cont'd from p. 8**

he is a fornicator. I reject that argument. This is 1989. If the law is to declare something of that sort, that is the job of the legislator.

Defendant's counsel suggested that legislative action in this area was unlikely, as legislators are notorious fornicators themselves, and it was thus an area in which the common law should show some leadership. I disagree. As a court of first instance, it is our duty to apply legal principles and stare decisis. Fortunately, in respect of the issues before us, there are no cases on point, and principles will have to suffice.

A witness for the defence gave testimony regarding the unlikelihood of the defendant having been enriched by his wife's new sophistication. He liked to bowl and did not read well. He missed their Friday nights at the bingo hall. In fact, argued counsel, the court would be correct in principle to look not at an objective valuation of the constructive value of the wife, but rather at the defendant's subjective constructive valuation. All things considered, he liked her better the other way, subjectively there had been an impoverishment, as indicated in his counterclaim, which he grounds in trespass, seeking

consequential damages, being the cost of a housekeeper and a cook.

Plaintiff countered by arguing that, if the defendant was sincere in his subjective constructive devaluation, he could at his option enter the constructive marketplace and obtain a woman equivalent in means to his wife at the date of the trespass, allowing plaintiff to keep the wife, and again plaintiff would be bound to account only for the cost of a reasonable courtship, which on the facts would be bowling and bingo.

I reject the notion that there is a basis for the counterclaim in tort. Damages are too remote, and for the defendant to expect the wife, in this day and age, to do the cooking and cleaning, is clearly an instance of unreasonable reliance.

Still, I fail to see how the defendant has been enriched by the plaintiff. It has not been suggested that the wife has been rendered employable by the various bits of esoteric chit-chat with which she is now armed, and neither is it suggested that the defendant will ever attend the appropriate sort of cocktail party where her new intellectual dexterity will enhance his reputation.

If there has been an enrichment in all this, it seems to me that the beneficiary has

been the wife, and the nature of the enrichment (or impoverishment, depending on your point of view) is that she seems to have acquired a mind of her own. Perhaps the plaintiff is responsible, perhaps the defendant. Probably Donahue. Anyway, the sum of it leads me to conclude that any order this court might make as to who among the candidates has greater or lesser equitable interest in the wife may be met with considerable indifference on her part.

So that, anxious as I am to apply judicial sleight of hand to the legal principles here before me, I feel a more compelling obligation to dispose the case with a morsel of folk wisdom: a woman, gentlemen, is a living tree...no, a woman is a beacon of sunlight...or, a woman is a sack of peppercorns...or, a walk on a country road on a crisp autumn morning with a bull terrier and a pipefull of...no, a menacing storm on the horizon....What I mean to say is... No, in fact, that is what I meant to say.

Dismissed.



Hedonism: Articles needed!

Remember our "special exam survival issue" we want to publish on November 22, 1989? Oui-oui, sur l'Hédonisme et les plaisirs de la vie en général et d'un étudiant en droit en particulier? Guess what: we want you to write ARTICLES - S.V.P. : DONNEZ-NOUS VOS ARTICLES; plus ils seront fous, plus nous les aimerons!!! Remember: November 22, 1989.

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Human Rights Lecture

Prof. Thomas Buergenthal will lecture on "The International Human Rights Revolution" on Wednesday, November 1st, at 5:00 p.m. in the Moot Court as part of the Third Annual Natan Sharansky Lectureship on Human Rights.

Prof. Thomas Buergenthal is a leading human rights scholar advocate. He is a distinguished academic in Comparative and

International Law at George Washington University Law School, has served as a judge on the Inter-American Court on Human Rights and has published 15 books in the area of International Human Rights law.

The Sharansky Lectureship, sponsored by the Law Faculty and McGill-based Inter-Amicus was inaugurated two years ago.